



3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Trial and Appeal Board (TTAB) Actions

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: InformationCollection@uspto.gov. Include "0651-0040 comment" in the subject line of the message.
- Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.
- Federal Rulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to LaToya Brown, Technical Quality Review Analyst, Trademark Trial and Appeal Board, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-4283; or by e-mail to LaToya.Brown@uspto.gov with "Paperwork" in the subject line. Additional information about this collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

SUPPLEMENTARY INFORMATION

I. Abstract

This collection of information is required by the Trademark Act of 1946, Sections 13, 14, and 20, 15 U.S.C.

1063, 1064, and 1070, respectively. Under the Trademark Act, any individual or entity that adopts a trademark or service mark to identify its goods or services may apply to federally register its mark. Section 14 of the Trademark Act allows individuals and entities to file a petition to cancel a registration of a mark, while Section 13 allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of a mark. Section 20 of the Trademark Act allows individuals and entities to file an appeal from any final decision of the Trademark Examining Attorney assigned to review an application for registration of a mark.

The USPTO administers the Trademark Act pursuant to 37 CFR Part 2, which contains the various rules that govern the filing of petitions to cancel the registration of a mark, notices of opposition to the registration of a mark, extensions of time to file an opposition, appeals, and other papers filed in connection with inter partes and ex partes proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal

empowered to determine the right to register and subsequently determine the validity of a trademark.

The information in this collection can be submitted in paper format or electronically through the Electronic System for Trademark Trials and Appeals (ESTTA). There are no paper forms associated with this collection. However, the TTAB has suggested formats for the Petition to Cancel and the Notice of Opposition that individuals and entities can use when submitting these petitions and notices to the TTAB. These are not forms and, as such, do not have form numbers. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases electronically, they must use the forms provided through ESTTA. Oppositions to extensions of protection under the Madrid Protocol, as well as requests for extensions to oppose, must be filed electronically through ESTTA. This collection contains two suggested formats and six electronic forms.

The additional papers filed in inter partes and ex parte proceedings can be filed in paper or electronically. Although the number of paper filings is decreasing in favor of electronic filings, there still are a small percentage of paper submissions.

The information in this collection is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, as both common law trademark owners and federal trademark registrants must actively protect their own rights.

II. Method of collection

By mail, hand delivery, or electronically through ESTTA when a party files a petition to cancel a trademark registration, an opposition to the registration of a trademark, a request to extend the time to file an opposition, a notice of appeal, or additional papers for inter partes and ex parte proceedings with the USPTO. However, notices of opposition and extensions of time to file notices of opposition against the extensions of protection under the Madrid Protocol must be filed electronically through ESTTA. Only notices of appeal for ex parte appeals can be submitted by facsimile, in accordance with 37 CFR 2.195(d)(3).

III. Data

OMB Number: 0651-0040.

Form Number(s): PTO 2120, 2151, 2153, 2188, 2189, and 2190.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for profits; non-profit institutions.

Estimated Number of Respondents: 76,017 responses per year. Of this total, the USPTO estimates that approximately 92% (70,100) will be filed electronically.

Estimated Time Per Response: The USPTO estimates that it will take the public from 10 to 30 minutes (0.17 to 0.50 hours), depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information required for this collection.

Estimated Total Annual Respondent Burden Hours: 15,524 hours per year.

Estimated Total Annual Respondent Cost Burden: \$3,974,144. The USPTO estimates that it will take a 50/50 level of effort by attorneys and paraprofessional/paralegals to complete the requirements in this collection.

The hourly rate for attorneys is \$389, while the hourly rate for paraprofessional/ paralegals is \$122. After calculating the average of these rates, the USPTO estimates that the hourly rate for completing the petitions, notices, requests, and other papers will be \$256. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection will be \$3,974,144 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition to Cancel	30 minutes	77	39
Electronic Petition to Cancel	30 minutes	1,500	750
Notice of Opposition	30 minutes	140	70
Electronic Notice of Opposition	30 minutes	5,500	2,750
Extension of Time to File an Opposition	10 minutes	70	12
Electronic Request for Extension of Time to File an Opposition	10 minutes	17,000	2,890
Papers in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB decision 	10 minutes	3,100	527

Electronic Papers in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB decision 	10 minutes	37,000	6,290
Notice of Appeal	15 minutes	130	33
Electronic Notice of Appeal	15 minutes	2,600	650
Miscellaneous Ex Parte Papers	10 minutes	2,400	408
Electronic Miscellaneous Ex Parte Papers	10 minutes	6,500	1,105
TOTALS	- - - - -	76,017	15,524

Estimated Total Annual (Non-hour) Respondent Cost

Burden: \$2,453,224. There are no capital start-up, maintenance, or record keeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of postage as well as filing fees.

The petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex partes cases may be submitted to the USPTO or served on other parties by Express or first-class mail through the United States Postal Service. These papers can also be hand

delivered to the TTAB. The USPTO estimates that 6% of the petitions, notices, extensions, and additional inter partes and ex parte papers that are filed in paper will be submitted using Express Mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will be mailing the original to the TTAB and serving copies on the other parties involved in the proceedings. The USPTO estimates that it costs an average of \$19.95 for a standard flat rate envelope to send the petitions, notices, extensions, appeals, and additional papers by Express Mail to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 20% of the postage rate (\$4) for an estimated cost of \$23.95.

The USPTO estimates the remaining petitions to cancel, the notices of opposition and appeal, the extensions of time to file an opposition, and the additional papers filed in inter partes and ex parte proceedings that are filed in paper (roughly 94%) will be sent by first-class mail. The USPTO estimates that the average submission will weigh 2 ounces and that the respondent will mail the original to the TTAB and serve copies on the other parties involved in the proceedings. The USPTO estimates that it costs 66

cents to mail the petitions, notices, extensions, appeals, and additional papers to the TTAB. To account for the service of papers on other parties, the USPTO is adding an additional 80% of the postage rate (53 cents) for an estimated cost of \$1.19.

Item	Responses (a)	Postage Costs (\$) (b)	Total Non- Hour Cost Burden (a x b) (c)
Petition to Cancel 6% @ \$23.95 94% @ \$1.19	77	\$120.00 \$86.00	\$206.00
Notice of Opposition 6% @ \$23.95 94% @ \$1.19	140	\$192.00 \$157.00	\$349.00
Extension of Time to File an Opposition 6% @ \$23.95 94% @ \$1.19	70	\$96.00 \$79.00	\$175.00
Papers in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB decision 6% @ \$23.95 94% @ \$1.19	3,100	\$4,455.00 \$3,468.00	\$7,923.00
Notice of Appeal 6% @ \$23.95 94% @ \$1.19	130	\$192.00 \$145.00	\$337.00
Miscellaneous Ex Parte Papers 6% @ \$23.95 94% @ \$1.19	2,400	\$3,449.00 \$2,685.00	\$6,134.00
TOTALS	5,917	- - - - -	\$15,124.00

Therefore, the USPTO estimates that the total postage cost for this collection is \$15,124 per year.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The petitions to cancel and the notices of opposition and appeal have filing fees. There are no filing fees for the remaining items in the collection. The filing fees for the petitions to cancel, notices of opposition, and notices of appeal are per class of goods and services in the subject application or registration; therefore the total filing fees can vary depending on the number of classes. The total filing fees of \$2,438,100.00 shown here are the minimum fees associated with this information collection.

Item	Responses (a)	Filing Fee (\$) (b)	Total Non- Hour Cost Burden (a x b) (c)
Petition to Cancel	77	\$300.00	\$23,100.00
Electronic Petition to Cancel	1,500	\$300.00	\$450,000.00
Notice of Opposition	140	\$300.00	\$42,000.00
Electronic Notice of Opposition	5,500	\$300.00	\$1,650,000.00
Extension of Time to File an Opposition	70	\$0.00	\$0.00
Electronic Request for Extension of Time to File an Opposition	17,000	\$0.00	\$0.00

Papers in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB decision 	3,100	\$0.00	\$0.00
Electronic Papers in Inter Partes Cases <ul style="list-style-type: none"> • Answers • Amendments to Pleadings • Amendment of Application or Registration During Proceeding • Motions (such as consent motions, motions to extend, motions to suspend, etc.) • Evidence • Briefs • Surrender of Registration • Abandonment of Application • Documents Related to Concurrent Use Applications • Notice of Intent to Appeal a TTAB Decision 	37,000	\$0.00	\$0.00
Notice of Appeal (Ex parte)	130	\$100.00	\$13,000.00
Electronic Notice of Appeal (Ex parte)	2,600	\$100.00	\$260,000.00
Miscellaneous Ex Parte Papers	2,400	\$0.00	\$0.00
Electronic Miscellaneous Ex Parte Papers	6,500	\$0.00	\$0.00
TOTALS	76,017	- - - - -	\$2,438,100.00

The USPTO estimates that the total (non-hour) respondent cost burden for this collection, in the form of postage costs and filing fees, is \$2,453,224 per year.

IV. Request for Comments

Comments submitted in response to this notice will be

summarized and/or included in the request for OMB approval.

All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: November 8, 2013.

Susan K. Fawcett,
Records Officer, USPTO

Office of the Chief Information Officer

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